

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

KPA, Inc., a California Corporation

Defendant.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of KPA, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant KPA, Inc. owned the real property located at or about 510 E Santa Clara St, San Jose, California, between January 2019 and July 2020.

3. Defendant KPA, Inc. owns the real property located at or about 510 E

1 Santa Clara St, San Jose, California, currently.

2 4. Defendant KPA, Inc. owned Arco located at or about 510 E Santa Clara
3 St, San Jose, California, between January 2019 and July 2020.

4 5. Defendant KPA, Inc. owns Arco ("Gas Station") located at or about 510
5 E Santa Clara St, San Jose, California, currently.

6 6. Plaintiff does not know the true names of Defendants, their business
7 capacities, their ownership connection to the property and business, or their
8 relative responsibilities in causing the access violations herein complained of,
9 and alleges a joint venture and common enterprise by all such Defendants.
10 Plaintiff is informed and believes that each of the Defendants herein is
11 responsible in some capacity for the events herein alleged, or is a necessary
12 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
13 the true names, capacities, connections, and responsibilities of the Defendants
14 are ascertained.

15
16 **JURISDICTION & VENUE:**

17 7. The Court has subject matter jurisdiction over the action pursuant to 28
18 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
19 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

20 8. Pursuant to supplemental jurisdiction, an attendant and related cause
21 of action, arising from the same nucleus of operative facts and arising out of
22 the same transactions, is also brought under California's Unruh Civil Rights
23 Act, which act expressly incorporates the Americans with Disabilities Act.

24 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
25 founded on the fact that the real property which is the subject of this action is
26 located in this district and that Plaintiff's cause of action arose in this district.

27
28 **FACTUAL ALLEGATIONS:**

1 10. Plaintiff went to the Gas Station in January 2019, April 2019 and July
2 2020 with the intention to avail himself of its goods or services motivated in
3 part to determine if the defendants comply with the disability access laws.

4 11. The Gas Station is a facility open to the public, a place of public
5 accommodation, and a business establishment.

6 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
7 to provide wheelchair accessible sales counters in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 13. The Gas Station provides sales counters to its customers but fails to
10 provide wheelchair accessible sales counters.

11 14. A problem that plaintiff encountered was that the sales counter at the
12 Gas Station store was too high and there was no lowered portion of the sales
13 counter suitable for wheelchair users.

14 15. Plaintiff believes that there are other features of the sales counters that
15 likely fail to comply with the ADA Standards and seeks to have fully compliant
16 sales counters available for wheelchair users.

17 16. On information and belief the defendants currently fail to provide
18 wheelchair accessible sales counters.

19 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
20 to provide wheelchair accessible door hardware in conformance with the ADA
21 Standards as it relates to wheelchair users like the plaintiff.

22 18. The Gas Station provides door hardware to its customers but fails to
23 provide wheelchair accessible door hardware.

24 19. The problem that plaintiff encountered is that the Gas Station store had
25 pull bar and panel style handles that required tight grasping to operate.

26 20. Plaintiff believes that there are other features of the door hardware that
27 likely fail to comply with the ADA Standards and seeks to have fully compliant
28 door hardware available for wheelchair users.

1 21. On information and belief the defendants currently fail to provide
2 wheelchair accessible door hardware.

3 22. Moreover, on the dates of the plaintiff's visits, the defendants failed to
4 provide wheelchair accessible paths of travel in conformance with the ADA
5 Standards as it relates to wheelchair users like the plaintiff.

6 23. The Gas Station provides paths of travel to its customers but fails to
7 provide wheelchair accessible paths of travel.

8 24. A few problems that plaintiff encountered is that the entrance consisted
9 of a front approach to the push side of a swinging door. The door had a closer
10 and latch but the required 12 inches of clearance to the strike side of the door
11 did not exist. Moreover, paths of travel inside the Gas Station store were too
12 narrow.

13 25. Plaintiff believes that there are other features of the paths of travel that
14 likely fail to comply with the ADA Standards and seeks to have fully compliant
15 paths of travel available for wheelchair users.

16 26. On information and belief the defendants currently fail to provide
17 wheelchair accessible paths of travel.

18 27. These barriers relate to and impact the plaintiff's disability. Plaintiff
19 personally encountered these barriers.

20 28. As a wheelchair user, the plaintiff benefits from and is entitled to use
21 wheelchair accessible facilities. By failing to provide accessible facilities, the
22 defendants denied the plaintiff full and equal access.

23 29. The failure to provide accessible facilities created difficulty and
24 discomfort for the Plaintiff.

25 30. Even though the plaintiff did not confront the following barriers, the
26 path of travel leading to the restroom is too narrow. The restroom door
27 hardware has a traditional round knob handle. The restroom doorway clear
28 passage width is too narrow. Additionally, the restroom mirror, disposable

1 paper towel dispenser and coat hook are too high. There are no toilet grab bars
2 and the height of the toilet, when measured to the top of the toilet seat, is 15
3 inches. Moreover, the plumbing the underneath the sink is not wrapped to
4 protect against burning contact. Plaintiff seeks to have these barriers removed
5 as they relate to and impact his disability.

6 31. The defendants have failed to maintain in working and useable
7 conditions those features required to provide ready access to persons with
8 disabilities.

9 32. The barriers identified above are easily removed without much
10 difficulty or expense. They are the types of barriers identified by the
11 Department of Justice as presumably readily achievable to remove and, in fact,
12 these barriers are readily achievable to remove. Moreover, there are numerous
13 alternative accommodations that could be made to provide a greater level of
14 access if complete removal were not achievable.

15 33. Plaintiff will return to the Gas Station to avail himself of its goods or
16 services and to determine compliance with the disability access laws once it is
17 represented to him that the Gas Station and its facilities are accessible.
18 Plaintiff is currently deterred from doing so because of his knowledge of the
19 existing barriers and his uncertainty about the existence of yet other barriers
20 on the site. If the barriers are not removed, the plaintiff will face unlawful and
21 discriminatory barriers again.

22 34. Given the obvious and blatant nature of the barriers and violations
23 alleged herein, the plaintiff alleges, on information and belief, that there are
24 other violations and barriers on the site that relate to his disability. Plaintiff will
25 amend the complaint, to provide proper notice regarding the scope of this
26 lawsuit, once he conducts a site inspection. However, please be on notice that
27 the plaintiff seeks to have all barriers related to his disability remedied. See
28 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff

encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

35. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

36. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and

1 the bathrooms, telephones, and drinking fountains serving the
2 altered area, are readily accessible to and usable by individuals
3 with disabilities. 42 U.S.C. § 12183(a)(2).

4 37. When a business provides facilities such as sales or transaction counters,
5 it must provide accessible sales or transaction counters.

6 38. Here, accessible sales or transaction counters have not been provided in
7 conformance with the ADA Standards.

8 39. When a business provides facilities such as door hardware, it must
9 provide accessible door hardware.

10 40. Here, accessible door hardware has not been provided in conformance
11 with the ADA Standards.

12 41. When a business provides paths of travel, it must provide accessible
13 paths of travel.

14 42. Here, accessible paths of travel have not been provided in conformance
15 with the ADA Standards.

16 43. When a business provides facilities such as restrooms, it must provide
17 accessible restrooms.

18 44. Here, accessible restrooms have not been provided in conformance with
19 the ADA Standards.

20 45. The Safe Harbor provisions of the 2010 Standards are not applicable
21 here because the conditions challenged in this lawsuit do not comply with the
22 1991 Standards.

23 46. A public accommodation must maintain in operable working condition
24 those features of its facilities and equipment that are required to be readily
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 47. Here, the failure to ensure that the accessible facilities were available
27 and ready to be used by the plaintiff is a violation of the law.
28

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

48. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

49. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

50. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

51. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

52. Although the plaintiff encountered frustration and difficulty by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1 1. For injunctive relief, compelling Defendants to comply with the
2 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
3 plaintiff is not invoking section 55 of the California Civil Code and is not
4 seeking injunctive relief under the Disabled Persons Act at all.

5 2. Damages under the Unruh Civil Rights Act, which provides for actual
6 damages and a statutory minimum of \$4,000 for each offense.

7 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
8 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

9 Dated: November 12, 2020 CENTER FOR DISABILITY ACCESS

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11 By: 
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13 Amanda Seabock, Esq.
14 Attorney for plaintiff
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